

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NURENI A. IDRIS,

Petitioner,

97 CV 5005 (SJ)

- against -

MEMORANDUM AND  
ORDER

UNITED STATES OF AMERICA,

Respondent.

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A P P E A R A N C E S:

NURENI A. IDRIS  
Reg. # 37069-053  
F.C.I. Fort Dix West  
P.O. Box 7000  
Fort Dix, NJ 08640  
Petitioner, Pro Se

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United States Attorney  
One Pierrepont Plaza  
Brooklyn, NY 11201  
By: Eric Tirschwell, Esq.  
Assistant United States Attorney  
Attorneys for Respondent

JOHNSON, District Judge:

Nureni Idris ("Petitioner" or "Idris") has petitioned this Court for a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. Petitioner believes his federal court conviction should be set aside because he did not have "his day in court". Respondent moves to dismiss the petition as time-barred. For the

reasons stated below, the petition is dismissed.<sup>1</sup>

### **BACKGROUND**

On May 11, 1991, Petitioner was arrested and charged with importation of heroin. On April 24, 1992, after pleading guilty, Petitioner was sentenced to a prison term of 51 months to be followed by a five-year period of supervised release. Petitioner's sentence was stayed in order to allow him to cooperate with the government.<sup>2</sup> Petitioner's direct appeal was dismissed by the Court of Appeals on July 13, 1992 and was later reinstated and withdrawn by stipulation on July 30, 1992. Petitioner cooperated with the government for several years. On November 16, 1995, he was remanded into federal custody after a bench warrant was issued by this Court after Petitioner failed to appear on November 15, 1995 for a scheduled conference. On August 9, 1997, Petitioner filed the current petition.

### **DISCUSSION**

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"),<sup>3</sup> which

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<sup>1</sup> Rule 4(b) of the Rules Governing § 2255 Proceedings for the United States District Courts expressly states: "[i]f it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal . . . ."

<sup>2</sup> A copy of the agreement has not been provided. However, Petitioner claims that in exchange for cooperating, he "was promised he wouldn't be put in prison."

<sup>3</sup> Pub. L. No. 104-132, 110 Stat. 1214 (1996).

became effective on April 24, 1996, significantly amended 28 U.S.C. §§ 2244, 2253, 2254 and 2255. As a result, 28 U.S.C § 2255 now provides that federal habeas petitions challenging a judgment of a district court are subject to a one-year statute of limitations.<sup>4</sup> The limitation period, with certain exceptions, begins to run on the date of which the judgment of conviction becomes final. See 28 U.S.C. § 2255. However, Congress did not provide specific guidelines regarding the retroactivity of this provision, thereby leaving the resolution of that issue to the courts.

The Court of Appeals of the Second Circuit has held that in cases where, as here, the judgment of conviction became final before the effective date of the AEDPA,

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<sup>4</sup> 28 U.S.C. § 2255 states:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of --

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

the habeas petition may be filed outside the one-year period but within a "reasonable time" after April 24, 1996. See Peterson v. Demskie, 107 F.3d 92, 93 (2d Cir. 1997). Yet, it declined to set forth a precise definition of "reasonable time."

In Peterson, the court held that the petitioner's filing of his petition seventy-two days after the effective date of the AEDPA was timely. Id. at 93. However, the court stated that where a prisoner has had several years to bring a habeas corpus petition, it saw no need to accord a full year after the effective date of the AEDPA. Id. at 93. Further, the court cautioned that the reasonable time alternative should not be applied with undue rigor. Id.

In order to analyze the effect of the AEDPA on the instant case, it is necessary to reiterate the dates of the relevant events. As set forth above, Petitioner's proceedings ended on July 30, 1992, when his direct appeal was withdrawn. Yet, Idris's petition was filed on August 9, 1997, well over one year after the effective date of the AEDPA, over five years after his conviction became final, and nearly two years after he was remanded to federal custody. Inasmuch as Petitioner was cooperating with the government for approximately four and one-half years, Idris may have felt that he was precluded from filing a habeas petition during that time or that it was unnecessary. However, Petitioner was remanded to federal custody on November 16, 1995, and still did not file this habeas petition until August 9, 1997.

Petitioner has had several years to contemplate bringing a habeas corpus

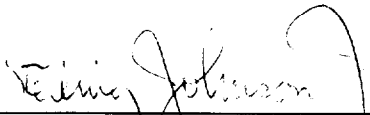
petition. However he neglected to do so. This Court notes that Petitioner filed his petition well outside of the statute of limitations time period to file a habeas petition. Furthermore, this Court finds that filing the present petition well over one year after the AEDPA's effective date does not constitute reasonable time as contemplated in Peterson. Accordingly, the Court hereby dismisses the petition as time-barred. See Laza v. United States, 1998 WL 54639 (S.D.N.Y. 1998) (finding petition filed well over two years after petitioner's conviction became final and over one year after the effective date of the AEDPA untimely); Alzate v. United States, 1998 WL 54637 (S.D.N.Y. 1998) (dismissing petition under § 2255 filed over eleven months after effective date of AEDPA where petitioner did not appeal the judgment of conviction); Scott v. United States, 1998 WL 2828 (S.D.N.Y. 1998) (applying Peterson rule to petition under § 2255 and dismissing petition filed 299 days after effective date of AEDPA). In addition, this Court declines to issue a certificate of appealability, as Petitioner has not presented a "substantial showing of the denial of a constitutional right." See Nelson v. Walker, 121 F.3d 828, 832 n.3 (2d Cir. 1997).

## CONCLUSION

For the reasons set forth above, Idris's petition for a writ of habeas corpus is dismissed.

SO ORDERED.

Dated: May 7, 1998  
Brooklyn, New York

  
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U.S.D.J.